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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,230	07/15/2003	Christopher W. Smith	00-20a	1203
30699	7590	12/21/2004		
DAYCO PRODUCTS, LLC 1 PRESTIGE PLACE MIAMISBURG, OH 45342			EXAMINER RAYFORD, SANDRA M	
			ART UNIT 1772	PAPER NUMBER
DATE MAILED: 12/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,230

Applicant(s)

SMITH ET AL.

Examiner

Sandra M. Nolan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7-15-03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claims

1. Claims 1-38 are pending.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 15 July 2004 was considered by the examiner.

Priority

3. It is noted that this application appears to claim subject matter disclosed in prior Application No. 09/951091, filed 13 September 2001. A reference to the prior application has been inserted as the first sentence of the specification of this application.

Note that the current status of all nonprovisional parent applications referenced should be included.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims 1-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 6,652,939 in view of Ries (US 5,798,048).

Claims 1 and 16 of the '939 patent cover fuel transport tubes and the making of same. The laminate structure is conductive nylon/Al/non-conductive polymer (patent claims 1 and 16). Note the tie layers of patent claims 11, 13, 15, and others. Note the protective cover layers of patent claims 28-31.

It fails to claim carbon fibers.

Ries teaches fuel filters having conductive inner layers (col. 6, lines 65-67) that include applicants' polyamides (col. 2, line 47 through col. 4, line 20) or polyolefins (col. 3, lines 43-44 and col. 4, lines 54-60) along with carbon fibers and graphite fibrils (col. 7, lines 12-31) as conductive fillers (col. 7, lines 1-5).

It is well known that graphite is carbon.

It is well known in the polymer art that fibrous forms of carbon/graphite are reinforcers.

The patents are analogous because they both deal with conductive polyamide layers in products for transporting fuels.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the fibers or fibrils of Ries as conductive fillers in the inner layers of the laminates of the '939 patent in order to render them conductive and to reinforce them more.

The motivation to employ the fibers or fibrils of Ries in the laminates of the '939 patent is found at col. 7, lines 4-5 and 12-31 of Ries, where the conductive fibers are discussed. Also, the reinforcing nature of these fibers makes their use an obvious way to strengthen the inner layers of the '939 tubes.

It is deemed desirable to make fuel tubes that have reinforced inner layers in order to lengthen their useful lives.

6. Claims 1-38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of copending Application No. 10/621231 in view of Ries.

This is a provisional obviousness-type double patenting rejection.

The '231 application claims cover fuel tubes having conductive polyethylene/Al/non-conductive polymer structure and methods of making them (note claims 1 and 19 of the '231 application). Tie layers are recited in claims 14-18, 21 and 32-34. Protective cover layers are recited in claims 30-31.

It fails to claim polyamide inner layers or carbon fibers.

Ries is discussed above. It teaches the equivalence of polyamides and polyolefins in the inner layer at col. 3, lines 43-44.

The citations are analogous because they both deal with conductive polyamide layers in products for transporting fuels.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the polyamide inner layer and the fibrous carbon/graphite of

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Ries in the fuel tubes of the '231 application order to reinforce the tubes and render them conductive.

The motivation to employ the polyamide inner layer and fibrous carbon/graphite of Ries in the fuel tubes of the '231 application is found at col. 7, lines 4-5 and 12-31 of Ries, where the conductive fibers are discussed and at col. 3, lines 43-44 of Ries, where either polyolefins or polyamides are said to be useful as component A (i.e., in the inner layer).

It is deemed desirable to make fuel tubes having conductive and reinforcing fillers in their inner layers in order to lengthen their useful lives.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kertesz (DE 4405409; abstract only).

Kertesz teaches fuel hoses (title) containing Al cores (second sentence of abstract) and polyamide inner and outer layers (third sentence of abstract). The inner layer contains a conductive material (penultimate sentence of the abstract). The polyamide used is PA 12 (last sentence of abstract).

It fails to teach the use of fibrous carbon/graphite in its inner layers.

Ries is discussed above.

The references are analogous because both deal with fuel transport articles having conductive inner layers.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the fibrous carbon/graphite of Ries in the inner layers of the Kertesz tubes in order to reinforce the layers while enhancing conductivity.

The motivation to employ the fibers or fibrils of Ries in the laminates of Kertesz is found at col. 7, lines 4-5 and 12-31 of Ries, where the conductive fibers are discussed. Also, the reinforcing nature of these fibers makes their use an obvious way to strengthen the inner layers of the Kertesz tubes.

It is deemed desirable to make fuel tubes that have reinforced inner layers in order to lengthen their useful lives.

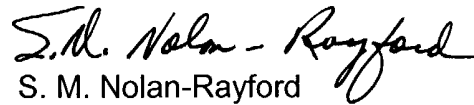
Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can normally be reached Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

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If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.

A handwritten signature in black ink, reading "S.M. Nolan-Rayford". The signature is fluid and cursive, with the first and last names being more prominent than the middle initial.

S. M. Nolan-Rayford
Primary Examiner
Technology Center 1700

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